HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

Writ Petition No.2250 of 1995

Between:
K.Santaiah

.....Petitioner

AND

Managing Director,
A.P.State Meat and Poultry Development
Corporation Ltd., Shantinagar,
Hyderabad.

.....Respondent

:: O R D E R ::

Counsel for the petitioner : Shri Tuhin Kumar for
Shri B.Nageswara Rao

Counsel for the respondent : Shri D.Prabhakar Reddy

Date: 27-09-2006

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This is a petition for quashing proceedings No.5715/E-1/91-1 dated 07-12-1994 issued by the Managing Director of Andhra Pradesh State Meat and Poultry Development Corporation Limited (hereinafter described as 'the respondent') whereby he dismissed the petitioner from service and also ordered recovery of Rs.20,285/- from him.

The Facts:

While he was working as Poultry Assistant at Poultry Marketing Centre, Srikakulam, Shri Thirlangi Satyam, son of Surnayanarayana, Resident of China Harichandrapuram Village made a complaint to the Anti-Corruption Bureau (for short 'the ACB') that Dr. T.Ashok Kumar, Assistant Manager and the petitioner had demanded Rs.150/- for issue of certificate on the basis of which his son could get electricity connection for his poultry shed. On the next day, i.e., 15-11-1991, the ACB officers laid trap. After money was handed over to the petitioner, the complainant signalled to the Deputy Superintendent of Police, ACB, who was waiting outside with witnesses. The Deputy Superintendent of Police, ACB subjected Dr. T.Ashok Kumar to phenolphthalein test, but the same was found negative. However, when the petitioner was subjected to same test, the colour of the solution turned pink. Dr. T.Ashok Kumar and the petitioner were arrested on 16-11-1991, but were released on bail on self-sureties. In the course of investigation, the ACB also discovered that both T.Ashok Kumar and the petitioner had indulged in other financial irregularities and the latter had misappropriated Rs.20,285/-. After completing the investigation, the ACB submitted report with the recommendation that departmental action be taken against Dr.T.Ashok Kumar and the

petitioner.

On receipt of the report of the ACB, the respondent issued order dated 22-08-1992 vide which he appointed Dr. K.Subba Rao, Regional Manager of the Corporation as enquiry officer. The latter issued memo No.Roc.No.269-E/91 dated -3-1993 for holding enquiry against Dr. T.Ashok Kumar and the petitioner on the following charges:

"1. Allegation of corruption in ACB trap on 15-11-1991 against Dr. Ashok Kumar, Asst. Manager and Shri K.Santaiah, Poultry Assistant of Poultry Marketing Centre, Srikakulam.

2. Financial irregularities and mismanagement committed in the proper maintenance of cash book, receipts etc. relating to financial transactions, deliberate misappropriation of Corporation money of Rs.20,285/- by Sri K.Santaiah, Poultry Assistant by not bringing the stock of 65 bags feed into the stock register wilfully and with malafide intention.

3. Administrative inaction noticed in the issue of certificate for granting electricity tariff concession in contradiction to the prescribed procedure.

The petitioner filed reply and denied the charges. Thereafter, the Regional Manager of the Corporation conducted a detailed enquiry and submitted report dated 31-12-1993 with the finding that Charge Nos.1 and 2 have been proved against the petitioner. The findings and conclusions recorded by the enquiry officer in respect of charge Nos.1 and 2 are extracted below:

"SPECIFIC FINDINGS OF THE ENQUIRY OFFICER ON THE CHARGE WITH REFERENCE TO EXPLANATION GIVEN BY THE OFFICERS AND EVIDENCE/WITNESS RECORDED

1. The complainant Sri T.Satyam has approached Dr. T.Ashok Kumar, Asst. Manager with the application of T.Ravi Kumar dated 26-8-1991 is a fact.
2. It is also a fact that a letter/certificate addressed to A.P. State Electricity Board for L.T.tariff dated 4-9-

1991 has prepared, taken the signature of the party, but taken back and cancelled the same along with cash memo of the same date for Rs.100/-. The AO-1 and AO-2 given the reason that the complainant expressed his inability and requested for exemption from paying fee Rs.100/-. This was denied by the complainant, stated his helplessness to pay the bribe amount of Rs.150/- but not Rs.100/- as fee.

3. The complainant approached again on 15-11-1991 for a certificate. AO-1 and AO-2 prepared a certificate and signed with date 15-11-1991 along with a cash memo Rs.29,251/- with a date 11-11-1991 and handed over the original certificate. When the variation in dates was questioned by complainant, both AO-1 and AO-2 informed, for convenience of accounts adjustments later.

4. Complainant Satyam during enquiry and cross-examination by Enquiry Officer AO-1 and AO-2 reiterated his earlier stand stating that both AO-1 and AO-2 made him to go round the office number of times to make him to pay bribe amount, also denied having taken change from Santhayya, Poultry Asst.

5. Mediators C.H.Sivarama Prasad and Ommi Atchutharam Assistant Executive Engineers both have corroborated their earlier stand, stating that what has happened on 15th and 16th November 1991 as per mediator report I and II were correct in which recovery of tainted money and positive result to phenolphthalein test from the hands of AO-2 Santhayya and negative result from AO-1 Ashok kumar hands. In defence both Ashok Kumar and Santhayya denied having asked for the money and accepted, but took only Rs.100/- towards Corporation prescribed fee and Santhayya accepted another Rs.150/- for a change of 15 Nos. of ten rupees notes from the complainant. When AO-1 was questioned on this, said to have heard word 'CHANGE'. But the complainant has denied this, also stated that he was not allowed to move from the place by ACB officials, since the search on person complainant during post trap proceeding No., 15 Nos. Ten rupees notes were found and going for nature call by complainant before trap but not after trap has been further supported by statement given by A.C.B. Inspector, Sri Ramachandra Rao during

enquiry.

6. Seizure of huge amount of Rs.35,661-35 by ACB having no accounts and incomplete cash book and related books and accounts further drive to the point of suspicious nature of activities at the unit.

7. CONCLUSIVE REMARKS OF THE ENQUIRY OFFICER

Though the ACB came to the conclusion that the allegations proved beyond any reasonable doubt against both the accused officers and at the same time admitting that the evidence against AO-1 is not strong enough to prosecute in the court of law and in view of contention of AO-1 that his demand part of the bribe amount was not proved, its acceptance by AO-1 was also not proved, so also no independent witness to support the demand, with benefit of doubt given for AO-1, in spite of circumstantial evidences, it is desirable not to view the issue seriously against Asst. Manager Dr. T.Ashok Kumar.

With regard to AO-2 Santhaiah there is strong evidence against him as the tainted amount was recovered from him with positive phenolphthalein test and absent of 15 Nos. of 10 rupees notes from the complainant as contested by AO-2 Santhaiah, action may be taken as deemed fit.

SPECIFIC FINDINGS OF THE ENQUIRY OFFICER ON CHARGE WITH REFERENCE TO EXPLANATION GIVEN BY BOTH THE OFFICERS AND EVIDENCE/WITNESSES RECORDED

The ACB seized an amount of Rs.38,160-65 on 15-11-1991 from both Asst. Manager, Ashok Kumar and Poultry Assistant Santhayya and they admitted they do not have accounts for the amount. An amount of Rs.35,661-35 was remitted into the bank as sale proceeds of feed, Eggs, Dressed chicken etc., on 16-11-1991 (excluding Rs.250/- seized by ACB Rs.2,000/- personal cash of Poultry Assistant Santhaiah and Rs.499-30 U.D.Pay), proper receipts and accounts were shown only for Rs.27,394-35 and the remaining amount of Rs.8,267/- was simply brought into sales ledger and from there to cash book without raising any cash

receipt, an unauthenticated procedure to receive cash etc., from any source. Understandable both were silent on the issue in their explanation. This pertains to different items such as Eggs, Dressed Chicken, Medicines, Cattle feed extension etc.

The ACB have seized various records and Registers and cash receipt book in use thereby deprived them of scope to adjust the amounts fully by raising cash memos. But they could succeed partly through another cash receipt book, exclusively used for sundry debtors collections which the ACB have no knowledge and left behind to the tune of Rs.27,394-35 only leaving the balance Rs.8,267/- since it pertains to Eggs, Dressed chicken, medicines extension cattle feed etc., for which no credit sales practice and hence no debtors. Thus having no option, except to bring into sales ledger without raising cash memos to make up the amount Rs.35,661-35. Thus it appears both Ashok Kumar and Poultry Assistant Santhayya were habituated to handle the Corporation money to suit to their personal selfish ends temporarily, has been confirmed the way they both kept the Corporation money to a tune of Rs.35,661- 35 p. being sale proceeds without raising a single cash receipt during a period of 5 days 11-11-1991 to 15-11-1991.

Another incident of glaring financial misappropriation to a tune of Rs.20,255-00 being the cost of 65 bags of poultry/cattle feed under inter unit transfer from PMC Vizag under credit memo No.39045 dt. 20-11-91. The feed was received and acknowledged by Poultry Assistant, Santhayya but not brought into stock register. In their explanation to the charge, the Asst. Manager, Ashok Kumar says that he was on leave, hence nothing to do admitting that he signed the attendance Register and cash book by mistake. He was sanctioned casual leave from 20th to 22nd for 3 days and later extended. Whereas the Poultry Assistant Santhayya having admitted the receipt of the 65 bags, denied misappropriation as he kept the same in the custody of Asst. Manager since he was on duty on that day because of his signing of Registers. Whereas Ashok Kumar, Asst. Manager says, irrespective of his signing of Registers, the entire feed transactions were handled by Poultry Assistant Santhayya irrespective of his absence/presence on leave produced a Xerox copy of statement of account of feed given by Santhayya in his own hand writing from 17-11-1991 on which day the Asst. Manager was on leave with instructions to Poultry Asst. to look after routine work and continued till 27th November,

1991 on the day the Poultry Asst. gave a statement writing "HANDED OVER" to Asst. Manager on 27-11-1991. During the period the entire both receipts and sales accounts exhibited tallied with the stock register, except the disputed consignment of 20th. The contention of the Poultry Asst. Santhaiah that the stock of 65 bags of 20th were omitted in the statement as the Asst. Manager was on duty does not stand or not correct as another consignment of 25-11-1991 received and acknowledged by him while the Asst. Manager was on duty could find place along with another on 23rd in the statement of account and stock register given for the period from 17th to 26th November 1991.

CONCLUSIVE REMARKS OF ENQUIRY OFFICER:

It is my opinion they both Dr. Ashok Kumar and Poultry Assistant K.Santhayya were habituated to temporary misappropriation of Corporation money by not remitting regularly i.e. every day or two, on large scale, from the way a staggering amount of Rs.35,661-35 being the sale proceeds are kept pending without raising a single cash bill of any nature for days together as admitted by them to be punished suitably.

Misappropriation of Rs.20,285/- being the cost of 65 bags of Poultry/Cattle feed supplied on 20-11-1991, is a deliberate intentional mischief played by Poultry Assistant Santhayya to be punished and the amount recovered."

The Enquiry Officer also held that charge No.3 is established against Dr. T.Ashok Kumar.

The respondent accepted the enquiry report and issued notice dated 02-05-1994 to the petitioner to show cause as to why he may not be dismissed from service and an amount of Rs.20,285/- may not be recovered from him. The petitioner submitted reply dated 01-08-1994. He challenged the show cause notice on the following grounds:

1) That no specific charge was framed against him and he could not be punished on the basis of general allegations,
2) that copy of the ACB report was not supplied to him,
3) that the Enquiry Officer had prejudged his guilt,

4) that the Enquiry Officer did not record his own findings. He simply relied on the ACB report, and

5) that he was being discriminated in the matter of imposition of punishment.

The respondent rejected the points raised by the petitioner and confirmed the proposed penalty. This is evident from the following extracts of order dated 07-12-1994:

" DISCUSSIONS OF THE ABOVE EXPLANATION WITH REFERENCE TO FINDINGS OF THE ENQUIRY OFFICER IN RESPECT OF CHARGES AGAINST SRI K.SANTHAIAH ON THE FOLLOWING COUNTS:

1. The charges were originated from the combined involvement of both Dr. T.Ashok Kumar, and Sri K.Santhaiah, in the trap case conducted by the ACB followed by certain financial irregularities which came to light in the departmental enquiry in the maintenance of cash receipts and stock register resulting in the missing of stock entry receipt of 65 bags of feed worth Rs.20,255/- for which Sri Santhaiah was held accountable as per the findings of the Enquiry Officer.

Though the Charge Memo issued by the E.O., in one proceeding to both delinquent officials (Dr. T.Ashok Kumar and Sri K.Santhaiah) every charge has individually and jointly pointed out their involvement of responsibility and accountability. Hence the charges framed against each individual concerned was specific to the extent relevant to each.

2) Every charge framed against the delinquent official concerned fully discussed the ground on which it was to be framed. Hence the individual's saying that the base of the charge was not given against each charge is not correct.

3) Almost the entire content of the ACB report was reproduced while framing charges against both Dr. T.Ashok Kumar and Sri K.Santhaiah by the Enquiry Officer. Further there is no reason for him to ask for the ACB report, since he failed to say specifically on which point he wants the entire ACB report.

4) The delinquent himself has stated in his explanation that although there was no specific job chart for him, he rendered all the assistance to the A.M. in the day to day running of the office. Having maintained the records concerning to feed stock and cash receipt books all along, his saying now that he is not to be held

responsible for missing entry and the value of the received stock of 65 bags of feed is ridiculous and cannot be acceptable. There should have been either the stock physically available or the revenue for the value of the stock if really sold. Neither of these two exists which amounts to clear misappropriation of the amount (Rs.20,255/-). He was given every opportunity by the E.O. during the enquiry and concluded the enquiry with reference to the merits and the material connected to the case. Hence, his saying that he was denied reasonable opportunities is not correct.

5) Insofar as the trap case is concerned against him, the findings of the ACB report shall be the basis, which have exhibited the guilt of the concerned officials as per the evidences. The question of failure of the E.O. in drawing independent conclusions on the report of ACB in trap case will arise only when there is something new that comes to light in the departmental enquiry other than what ACB report suggests as per their investigation.

6) The E.O. has specifically reported in his finding that Dr. T.Ashok Kumar, A.M. was on casual leave from 17-11-1991 to 26-11-1991 during which period the endorsement of arrangement made was that the P.A. to look after the routine work of the unit which was substantiated with the statement given in writing by the P.A. as handed over to the A.M. on 27-11-1991. The E.O. has further maintained that during the said period of leave Dr. T.Ashok Kumar both the receipts and sales account exhibited by P.A. was tallied with the stock register except the receipt of consignment (65) bags of feed supplied on 20-11-1991. The E.O. therefore categorically disagreed and condemned the argument/logic put forth by P.A., that 65 bags received by him on 20-11-1991 were handed over to A.M. and omitted in the statement as the A.M. was on duty, as malafides and criminal intention of the P.A. (Santhaiah) to misappropriate the value of feed stock of 65 bags worth Rs.20,255/-.

The findings of the E.O. therefore be given credence on the counts of irregularity and substantiated the guilt on the part of Sri K.Santhaiah.

His further argument that original complaint was against Dr. T.Ashok Kumar, but not against him is not acceptable, since the ACB trap case has proved guilty of K.Santhaiah, P.A., beyond any doubt as per the report of the ACB, which is unpardonable offence committed by him constituting breach of trust."

Shri Tuhin Kumar argued that the order of punishment should be declared nullity and quashed because it was not preceded by an enquiry held in accordance with the provisions of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (for short 'the 1960 Act'). Learned counsel submitted that in view of the mandate of

Section 4 of the 1960 Act, enquiry against the petitioner could have been held only by the Tribunal and not by Regional Manager of the Corporation, and therefore, the enquiry report prepared by him could not have been made basis for passing order dated 7-12-1994. In support of this argument, Shri Tuhin Kumar relied on the judgment of the Supreme Court in **State of Andhra Pradesh v. K.Ramachandran**[1]. Learned counsel then argued that the order of punishment is liable to be nullified on the ground of violation of rules of natural justice because the petitioner was not given effective opportunity of hearing. He submitted that the action initiated against the petitioner was founded on the report prepared by the ACB, but copy thereof was not supplied to him despite demand and on that account, he could not effectively put forward his defence. Lastly, Sri Tuhin Kumar argued that the punishment of dismissal imposed on the petitioner should be quashed on the ground of violation of Articles 14 and 16 of the Constitution and also on the ground that the same is wholly arbitrary and disproportionate to the misconduct found proved. Learned counsel pointed out that even though Dr. T.Ashok Kumar was the main culprit, he was let off with a minor penalty of stoppage of one increment, whereas his client has been dismissed from service. In support of this argument, Shri Tuhin Kumar relied on the judgments of the Supreme Court in **Brij Nandan Kansal v. State of U.P.**[2], **Mohd. Quaramuddin v. State of A.P.**[3], **State Bank of Patiala v.**

S.K.Sharma[4] and **State Bank of India v. D.C.Agarwal**[5]. He also relied on the judgments of the Madras High Court in **Management, Indian Oil Corporation, Madras v. The Presiding Officer, II Additional Labour Court, Madras** [6] and of this Court in **Gade Jogi Reddy v. Commissioner, Survey Settlement and Land Records, A.P.**[7].

Shri D.Prabhakar Reddy, learned counsel for the respondent argued that the provisions of the 1960 Act are not applicable to the employees of the Corporation and, therefore, punishment imposed on the petitioner cannot be nullified on the ground that enquiry was not conducted by the Tribunal constituted under Section 3 of that Act. He then argued that the petitioner's complaint regarding non-supply of copy of the ACB report should be rejected because substance of the report was incorporated in the charge sheet and also because during enquiry proceedings, he did not make any grievance about non-supply of copy of the ACB report. On the issue of discrimination in the matter of imposition of punishment, Shri Prabhakar Reddy defended the verdict of the respondent by arguing that while T.Ashok Kumar was not found guilty of the charge of accepting money for issue of certificate and misappropriation of funds, whereas both the charges were proved against the petitioner.

I have considered the respective submissions and minutely scrutinised the record.

The first question which calls for determination is whether the enquiry report and order of punishment are liable to be quashed on the ground of violation of the provisions of the 1960 Act.

Section 4 of the 1960 Act, as it stood before its amendment by Andhra Pradesh Amendment Act No.6 of 1993 was as under:

"**Cases to be referred to Tribunal**:

4. The Government shall refer to the Tribunal for inquiry and report, such cases as may be prescribed, of

allegations of misconduct on the part of Government servants."

By Andhra Pradesh Amendment Act No.6 of 1993, the word 'shall' appearing in Section 4 has been substituted with the word 'may'.

The term 'Government Servant' as defined under Section 2(b) of the un-amended Act was as under:

> " 'Government Servant' means a person in the civil service of the State."

The definition of the term 'Government Servant' was also amended by Andhra Pradesh Amendment Act No.6 of 1993. As per the amended Section 2 (b), the term 'Government Servant' means a person appointed to public services or to a post in connection with the affairs of the State of Andhra Pradesh.

A conjoint reading of the definition of 'Government Servant' and Section 4 of the 1960 Act (un-amended) shows that the State Government was obliged to refer the cases of misconduct on the part of government servants to the Tribunal constituted under Section 3 and further action was required to be taken on the basis of the report prepared by the Tribunal. However, these provisions do not have any bearing on the petitioner's case because Section 4 is applicable only to the government servants and not to the employees of the instrumentalities and agencies of the State like the Corporation. It is not the pleaded case of the petitioner that he was a Government Servant or was a person appointed in connection with the affairs of the State of Andhra Pradesh. Therefore, the enquiry in respect of the misconduct committed by him was not required to be entrusted to the Tribunal and the proceedings of enquiry conducted by the Regional Manager of the Corporation as also the consequential order passed by the respondent cannot be quashed on the ground of non-compliance of Section 4 of the 1960 Act. The ratio of the judgment of the Supreme

Court in **State of Andhra Pradesh v. K.Ramachandran** (supra) has no bearing on the petitioner's case. The only issue considered in that case was whether under the amended Section 4, whereby the Government was given option to refer the enquiry to the Tribunal, was applicable to pre-amendment misconduct. The Supreme Court answered the question in negative and held that enquiry into the misconduct prior to the amendment of Section 4 had to be entrusted to the Tribunal. The question whether the provisions of the 1960 Act are applicable to the employees other than the government servants was neither considered nor decided by the Supreme Court. Therefore, that judgment cannot be treated as laying down a proposition that an enquiry into the misconduct committed by the employees of the statutory or non-statutory Government Corporations/Agencies/Instrumentalities was required to be entrusted to the Tribunal.

The next point which merits consideration is whether the proceedings of enquiry held against the petitioner and the order of punishment are liable to be invalidated on the ground of violation of rules of natural justice. The substratum of the petitioner's challenge on this ground lies in his assertion that copy of the ACB report which constituted foundation of enquiry was not supplied to him. In this context, it is apposite to mention that in Memo dated -3-1993 issued by the Regional Manager of the Corporation, the relevant extracts of the report of the ACB were reproduced. This appears to be the reason why the petitioner did not make any grievance about non-supply of copy of the ACB report either at the stage of filing written explanation to the charge sheet or during the course of enquiry. For the first time, he made a complaint on this score in reply dated 01-08-1994 filed by him to contest the proposed penalty of dismissal from service. It is, therefore, reasonable to infer that the petitioner's defence was not prejudiced on account of non-supply of the complete copy of the ACB report, and the order of punishment cannot be quashed on the

ground of violation of rules of natural justice.

In early 60's and 70's, the Superior Courts had treated violation of the rule of hearing as sufficient to invalidate the administrative and quasi-judicial actions and orders, without requiring the petitioner to plead and prove prejudice, but in the recent decisions, the Supreme Court had consistently held that mere violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi v. State of Orissa**[8], **R.C.Sharma v. Union of India**[9], **Sunil Kumar Banerjee v. State of West Bengal**[10], **K.N. Tripathi v. State Bank of India**[11], **Mumtaz Hussein Ansari v. State of U.P.**[12], **Kashinath Dikshita v. Union of India**[13], **Chandrama Tiwari v. Union of India**[14], **Managing Director, ECIL v. B. Karunakar**[15], **Krishanlal v. State of Jammu and Kashmir**[16], **State Bank of Patiala v. S.K. Sharma** (supra), **S.K. Singh v. Central Bank of India**[17], **State of Uttar Pradesh v. Shatrughanlal**[18], **Food Corporation of India v. Padamkumar Bhuvan**[19], **State of Uttar Pradesh v. Harendra Arora**[20], **Oriental Insurance Company v. S. Balakrishnan**[21], **State of Uttar Pradesh v. Rameshchand Manglik**[22], **Canara Bank v. Debasis Das**[23], **Indra Bhanu Gaur v. Committee, Management of M.M Degree College**[24] and **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick**[25].

In **B. Karunakar's** case (supra), the Constitution Bench

considered the apparent conflict of views expressed by different Benches of the Supreme Court in **Union of India v. Mohd. Ramzan Khan**[26] and **K.C. Asthana v. State of Uttar Pradesh**[27] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). In the course of judgment, their Lordships of the Supreme Court framed the main question whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Supreme Court also framed the following incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in **Ramzan Khan's** case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises

another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the basic question in the affirmative, their Lordships considered the ancillary questions and answered question No.(v) in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The Constitution Bench then held:

> "Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show

how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

In **Harendra Arora's case** (supra), a Division Bench of the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in

whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M. Degree College** (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra), the Supreme Court referred to the judgment

of the Constitution Bench in **B. Karunakar's** case (supra) and observed that the principles of natural justice cannot be put in a straightjacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

There is another reason for not accepting the petitioner's plea that the order of punishment should be quashed on the ground of violation of the rules of natural justice. In the affidavit filed by him, the petitioner has neither averred that he had demanded copy of the ACB report before filing written statement or at any time during the course of enquiry. It is not even argued by Sri Tuhin Kumar that such a demand had been made by his client and the same was declined. It is thus clear that during the course of enquiry, the petitioner did not feel handicapped in defending himself on account of the alleged non-supply of copy of the ACB report. As a corollary to this, it must be held that the plea of denial of natural justice has been raised by him as an after-thought and, as such, the same is liable to be rejected.

The judgments on which reliance has been placed by Shri Tuhin Kumar do not have any bearing on the petitioner's case.

In **Brij Nandan Kansal**'s case (supra), the Supreme Court quashed the order of punishment because the Governor had acted on the report of the Legal Remembrancer, which contained findings against the delinquent, but copy of which was not given to him, and on that account he could not get opportunity of making representation against the report.

In **State Bank of India v. D.C.Agarwal** (supra), the Supreme Court approved the view taken by the Punjab and Haryana High Court that non-supply of the material, which constituted the basis for

imposing punishment, has the effect of vitiating the order of punishment.

Similar view was expressed in **Mohd. Quaramuddin**'s case (supra). In that case, the Supreme Court found that non-supply of Vigilance Commission's report, which had formed part of the record of enquiry and was taken into consideration by the disciplinary authority, had vitiated the order of punishment.

In **State Bank of Patiala v. S.K. Sharma** (supra), the Supreme Court laid down seven propositions in the matter of violation of rules of natural justice and held that in the absence of proof of breach, procedural aspects of rules of natural justice do not vitiate the action taken by the employer.

As mentioned above, in the present case, the petitioner's complaint regarding violation of rules of natural justice is an after-thought, and no prejudice was caused to him due to non-supply of complete copy of the ACB report.

The last point which needs adjudication is whether the punishment imposed on the petitioner is arbitrary, discriminatory or shockingly disproportionate so as to warrant judicial intervention. The plea of discrimination raised by the petitioner is founded on the bald assertion that even though he and T.Ashok Kumar were charged with the acceptance of money for issue of certificate to the son of the complainant, T.Ashok Kumar was let off with the minor penalty of stoppage of one increment, whereas he has been visited with the extreme penalty of dismissal from service. In my view, there is no merit in this plea of the petitioner because the evidence collected during the investigation conducted by the ACB and enquiry held by the Regional Manager did not establish that Dr. T.Ashok Kumar had accepted Rs.150/- from the complainant. Rather, it was proved that the money had been accepted by the petitioner. Therefore, his case cannot be treated as similar to that of Dr. T.Ashok Kumar. That apart, the petitioner was found guilty of misappropriation of an amount of

Rs.20,255/-, whereas no such charge was established against Dr. T.Ashok Kumar. Therefore, the action of the respondent to impose different penalties on them cannot be dubbed arbitrary or violative of Article 14 of the Constitution.

I am also convinced that the punishment imposed on the petitioner is commensurate with the misconduct found proved against him and the doctrine of proportionality cannot be invoked for modification or substitution of punishment with lesser penalty. The Court's power to interfere with the punishment imposed on the delinquent employee has become subject matter of large number of cases. The terms and phrases like arbitrary, unreasonable and unconscionable and shockingly disproportionate are often used by the advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and Wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the courts have to constantly remain guard against adopting a populist approach in such matters and ordinarily refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be exercised with great care and circumspection. Only in exceptional cases, the Court may interfere with the punishment, if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to the employee having regard to their sensitiveness, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee and the punishment, if any, imposed earlier. Above all, the Court has to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest.

The doctrine of proportionality was invoked by the Supreme Court in **Ranjit Thakur v. Union of India**[28] for quashing order of punishment. The proposition laid down in that case reads as under:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G.Ganayutham**[29] the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

> "(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.
>
> (2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in

outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

I n **Om Kumar v. Union of India**[30], the Supreme Court considered the applicability of the doctrine of 'proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra)**, B.C. Chaturvedi v. Union of India**[31] and held:

"1) In this context, we shall only refer to these cases. In

Ranjit Thakur v. Union of India this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal**[32], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

"The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-

making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is mine)

In **Director General, RPF v. Ch. Sai Babu** [33], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> " Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained and the department/establishment in which the delinquent person concerned works."

Reference also deserves to be made to the decisions of the Supreme Court in **State Bank of India v. Samrendra Kishore Endow**[34], **State of Uttar Pradesh v. Ashok Kumar Singh**[35], **State of Uttar Pradesh v. Nandkishore Shukla**[36], **State of Punjab v. Baxi Singh**[37], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[38], **Union of India v. J.R. Gheman**[39], **Secretary, A.P. SWRE I Society v. J. Prathap**[40] wherein the

Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

If the petitioner's case is considered in the light of the proposition of law laid down in the above noted cases, it is impossible to hold that the punishment imposed on him is arbitrary, unreasonable, unjust or shockingly disproportionate. The charges found proved against him were extremely grave. He committed the breach of trust reposed in him by the employer and thereby lost the right to continue in service. Therefore, the respondent did not commit any illegality by ordering his dismissal from service.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S.SINGHVI, C.J.

27th September, 2006.

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[1] AIR 1998 SC 1093
[2] AIR 1988 SC 908
[3] (1994) 5 SCC 118
[4] AIR 1996 SC 1669
[5] AIR 1993 SC 1197
[6] 1993 (4) SLR 286
[7] 2006 (5) ALD 126
[8] (1969) 3 SCC 392
[9] (1976) 3 SCC 574
[10] (1980) 3 SCC 304
[11] (1984) 1 SCC 43
[12] (1984) 3 SCC 295
[13] (1986) 3 SCC 229
[14] (1987) Suppl. SCC 518
[15] (1993) 4 SCC 727
[16] (1994) 4 SCC 422
[17] (1996) 6 SCC 415
[18] (1998) 6 SCC 651
[19] (1999) SCC (L&S) 620
[20] (2001) 6 SCC 392
[21] (2003) 11 SCC 734
[22] (2003) 3 SCC 443
[23] (2003) 4 SCC 557
[24] (2004) 1 SCC 281
[25] (2005) 2 SCC 237
[26] (1991) 1 SCC 588
[27] (1988) 3 SCC 600
[28] (1987) 4 SCC 611
[29] (1997) 7 SCC 463
[30] (2001) 2 SCC 386
[31] (1995) 6 SCC 749
[32] (2003) 3 SCC 605
[33] (2003) 4 SCC 331
[34] (1994) 2 SCC 537
[35] (1996) 1 SCC 302
[36] (1996) 3 SCC 750
[37] (1997) 6 SCC 381
[38] (1998) 9 SCC 416

[39] (1999) 6 SCC 403

[40] (2002) 10 SCC 430